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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 198

STATE OF MINNESOTA
Petitioner

vs.

ROBERT MORFORD ADAMS, ET AL.
Respondents

On Petition for a Writ of Certiorari to the Supreme Court of the State of Minnesota

BRIEF IN OPPOSITION TO THE PETITION

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OPINIONS BELOW

The opinions of the Supreme Court of Minnesota are reported, unofficially, in 89 N. W. 2d pp. 23, 57, and are attached to the Petition for Certiorari[1] as Appendix A. The findings of fact of the trial court are printed in the record[2] (R. Vol. V, pp. 9-17, 47-56, 74-83, 104-114, 135-146).

[1] Hereafter referred to as "Pet.".

[2] Hereafter referred to as "R".

JURISDICTION

The first opinion of the Supreme Court of Minnesota was filed on June 28, 1957. A petition for rehearing was denied by an opinion filed March 14, 1958. Judgment was entered on April 23, 1958. The petition for a writ of certiorari was filed on July 22, 1958. The jurisdiction of this Court is invoked under *28 U. S. C.* 1257 (3).

QUESTIONS PRESENTED

1. Whether the title claimed by petitioner is specially set up or claimed under the Constitution of the United States or any statute of the United States so as to give this Court jurisdiction.

2. Whether petitioner has not foreclosed itself by taking a position exactly opposite to that upon which it commenced, tried and appealed the cases.

3. Whether, in any event, the courts of Minnesota were not correct in applying the federal test of navigability.

4. Whether this Court will review questions of fact passed on by two courts below.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

It is claimed by petitioner that Article IV, Sec. 3 of the Constitution of the United States is involved. It is also claimed that Act of May 11, 1858, *11 Stat.* 285 is involved. They are set forth in Appendix C of the Petition (Pet. App. C, pp. 95-97).

STATEMENT

These actions, which were consolidated for the purpose of trial (R. Vol. I, pp. 3-6) were brought by the State of Minnesota to quiet title to the beds of certain lakes and the connecting streams. They were brought in the usual statutory form. The complaint in each case alleged that the waters involved were navigable on May 11, 1958, the date of the entry of Minnesota into the Union, and alleged that upon such admission as a sovereign state plaintiff became the owner of the beds of said waters (Pet. App. B, pp. 82, 84). The relief prayed for was that the state be adjudged the owner in fee of the lake beds and the iron ore therein and that it have the right to drain said waters without the consent of the numerous defendants who were the owners of all lands riparian to the waters (Pet. App. B, p. 85).

The trial court found that all of the lakes except Little Rabbit Lake were not navigable on May 11, 1858 and that therefore the state was not the owner of the beds. It found Little Rabbit Lake was navigable and that therefore the state was the owner of the bed of that lake (R. Vol. V, pp. 9-176).

After motions for amended findings or for a new trial (R. Vol. V., pp. 18-194) the state appealed to the Minnesota Supreme Court which affirmed the trial court's findings (Opinion, Pet. App. A, pp. 23-56). A petition for a rehearing was denied by an opinion filed March 14, 1958 (Pet. App. A, pp. 57-77).

In deciding the cases both courts applied the so-called federal test of navigability which had previously been adopted by the Supreme Court of Minnesota (Findings of trial court, Pet. App. B, pp. 86-94, Opinions of Supreme Court, Pet. App. A, pp. 23-77).

ARGUMENT

I.

The title claimed by petitioner did not arise out of any constitutional provision or statute and, therefore, this court has no jurisdiction.

Petitioner invokes the jurisdiction of this Court under *28 U. S. C.* 1257 (3) by asserting that it claims title under Article IV, Sec. 3 of the Federal Constitution and the Act of May 11, 1858, *11 Stat.* 285 (Pet. pp. 3, 4). This claim requires proof, somewhere in the record, that the rights and title so asserted were at all stages of the proceedings "specially set up or claimed" to have arisen out of those constitutional and statutory provisions—otherwise no federal question is involved.

The record establishes beyond any question that petitioner never, either in the trial court or in the Supreme Court of Minnesota, claimed any right or title under the Constitution or statutes of the United States but, on the contrary, based its claim solely and exclusively on the sovereignty of the State of Minnesota. This appears from the complaint in the Big Rabbit Lake case in which the only allegation of ownership or source of title is set forth in these words (Pet. App. B, p. 84):

> "That plaintiff, upon admission to the United States as a sovereign state, became the owner of and ever since has been, and now is, the owner in fee simple of all that portion of the bed of Rabbit Lake below ordinary low-water mark, * * *."

The allegations of title and ownership in the other cases were in the same words.

Likewise, when petitioner appealed to the Supreme Court of Minnesota, no claim was ever made that the title

to the lands arose out of any constitutional or statutory provisions; no assignment of error in any way attempts to set up any right or title under the Federal Constitution or statutes. On the contrary, the only assignments of error were that the evidence did not sustain the findings of fact (Opinion of Minnesota Supreme Court, Pet. App. A, p. 26).

When it filed its petition for a rehearing in the Supreme Court of Minnesota petitioner again failed to assert any right or title under the Federal Constitution or statutes. On the contrary, it then abandoned its initial theory that the waters were navigable under the federal test of navigability and claimed that the courts should have applied some more liberal state test. This shift of position is noted in the opinion of the Minnesota Supreme Court denying the rehearing where the Court said (Pet. App. A, p. 61):

> "But as to applicable legal principles, the state now takes the position that the *Federal* tests for determining navigability of waters should *not* have been applied, but that some more liberal *state* rule should govern therein."

Indeed, petitioner is now asserting that its claim in its petition for rehearing was based upon the proposition that the state law governed, when it says (Pet. p. 7):

> "On petition for reargument, the State claimed that the Court had misconstrued the federal test of navigability and in addition urged that the question raised by the pleadings was not controlled by federal decisions, *but rather that it was determinable by the law of the State.*" (Emphasis supplied.)

It is an actual fact that petitioner, which is now claiming that its title arose out of specific constitutional and statutory provisions so as to bring it within the purview

of *28 U. S. C.* 1257 (3), *never so much as mentioned either of those provisions in the trial court and Minnesota Supreme Court until it filed its petition for rehearing.* Then, in that petition for rehearing the statute, Act of May 11, 1858, *11 Stat.* 285 *was never cited or discussed in any way* and Art. IV, Sec. 3 of the Federal Constitution was cited *only to show that no constitutional question was involved but that the claimed title arose out of the sovereignty of the state* (Petition for rehearing, Part II, pp. 27, 28).

By reason of the foregoing state of the record it is apparent that petitioner never claimed title under the Consituation or statutes of the United States but that its only claim at all times was based upon its inherent sovereignty. This brings the question of jurisdiction squarely within the holding of this court in *Iowa v. Rood,* 187 U. S. 87. The facts and claims in that case are identical with the facts and claims here. The State of Iowa claimed title to the bed of a lake by reason of its sovereignty; the Iowa court found the lake to be unnavigable and held against the state. The state then came to this court by writ of error claiming that this court had jurisdiction because the title arose out of Art. IV, Sec. 3 of the Federal Constitution and out of Act of Dec. 28, 1846, *9 Stat.* 117, which latter act is in all respects identical with Act of May 11, 1858, *11 Stat.* 285 upon which petitioner relies in this case. This court dismissed for want of jurisdiction upon the ground that the title of the state to the lake bed, if any, did not arise out of the Constitution or statute but out of the rules of sovereignty long antedating the Constitution and statute saying, p. 90:

> "This clearly does not involve the validity of any treaty or statute of the United States, or the consti-

> tutionality of any state statute or authority, so that, if jurisdiction exists in this court, it must be by reason of the claim of a title, right, privilege, or immunity under the Constitution, or an authority exercised under the United States, the decision of which was against such title, right, privilege or authority."

and on page 91:

> "This would not involve a construction of the Constitution, nor of any title derived thereunder, but a determination of the title of the Crown to lands beneath the beds of inland lakes, and of the respective rights of the states and the general government as successors thereto."

That case is decisive of the jurisdictional question here.

It is apparent that petitioner has confused the question of federal law as a basis of jurisdiction with federal law incidentally involved in the suit. In the words of the Court in *Gully v. First National Bank In Meridian*, 299 U. S. 109.

> "Not every question of federal law emerging in a suit is proof that a federal law is the basis of the suit."

Also, see *State of South Carolina v. South Carolina E & Gas Co.*, 41 F. Supp. 111.

II.

Petitioner cannot change its theory in this court.

A party cannot try a case on one theory and, on review, reject that theory and substitute another. This court will not entertain a theory contrary to that on which the case was tried. When both parties try a case on one theory that theory cannot be rejected in an appellate court.

State of Ohio v. Swift & Co., 260 U. S. 146;

San Juan Light & Transit Co. v. Requena, 224 U. S. 89;

Virtue v. Creamery Package Mfg. Co., 227 U. S. 8;

Virginian Ry. Co. v. Mullens, 271 U. S. 220.

Petitioner is now claiming that the State Courts were in error in applying a test of navigability which follows the federal tests (Pet. p. 3, Opinion of Minnesota Supreme Court, Pet. App. A, p. 61). The fact is that petitioner itself chose, urged and applied that exact test in both the trial court and the Minnesota Supreme Court.

Petitioner has attached to the petition only the complaint in the Big Rabbit Lake case (Pet. App. B, p. 81) which merely alleges the lake to be navigable (Pet. p. 81). However, the complaints in each of the other five consolidated cases allege specifically:

> "That on May 11, 1858, said Clinker Lake and said stream connecting Clinker Lake and said Curley Lake, also known as Turner Lake, in their natural and ordinary conditions were susceptible of being used as highways for commerce over which trade and travel was or could have been conducted in the customary mode of trade and travel on water."

A copy of the Clinker Lake complaint is attached hereto as Appendix A. The other four complaints use identical language.

The reason for the difference in the allegations of navigability in the Big Rabbit case and the other five cases is apparent from the history of the litigation. The Big Rabbit complaint (Pet. App. B, p. 81) was drawn in 1944 while the other cases were started in 1948 and 1949. In the meantime *State v. Longyear Holding Co.*, 224 Minn. 451, 29 N. W. 2d 657 (appeal dismissed *Longyear Hold-*

ing Co. v. Minnesota, 336 U. S. 948), was decided. Obviously, after the decision in *Longyear*, petitioner realized that the State of Minnesota had adopted the rule that the so-called federal tests govern and that it must plead and prove facts sufficient to bring the waters within those tests of navigability. Whatever its reason, petitioner did plead the exact definition of the federal test as laid down by this Court in *United States v. Holt State Bank*, 270 U. S. 49, and as adopted by the Minnesota Court in *State v. Longyear, supra*, as well as several other cases hereinafter cited. Issue was joined and the cases tried and decided on the very theory chosen by petitioner (Trial Court's findings, Pet. App. B, pp. 90, 93, 94).

Petitioner then appealed to the Minnesota Supreme Court and on that appeal it still insisted that the federal test of navigabiliy was the only and proper test (Opinion denying petition for rehearing, Pet. App. A, p. 70). Actually, one of its assignments of error was as follows:

> "The District Court erred in failing to hold that Rabbit Lake was, on May 11, 1858, a navigable body of water under the federal rule or test of navigability" (Appellant's Brief, pp. 44, 53, 62, 72, 81).

In its brief on the appeal to the Minnesota Supreme Court petitioner still insisted that the federal test of navigability was the only proper test (Opinion denying petition for rehearing, Pet. App. A, p. 70). Furthermore, petitioner had claimed title to lake beds in three other cases decided by the Minnesota Supreme Court and in each of those cases had specifically insisted that the federal test of navigability applied (Opinion denying petition for rehearing, Pet. App. A, pp. 67-70). Not only did petitioner take that position in those cases but it successfully moved to dismiss an appeal in this Court in a case involving the

same question on the ground that no federal question was involved. *Longyear Holding Co. v. State of Minnesota*, 336 U. S. 948.

Petitioner, then, is in the position of having urged the federal test of navigability in the two courts below and is now claiming error in this Court because those courts tried and decided the cases on the theory which petitioner chose. That position cannot be sustained under any rule.

Petitioner now seems to argue that, although it did so urge twice in the courts below, it has purged itself of the consequences by changing its theory on its petition for a rehearing and has thus raised a federal question in time to give this Court jurisdiction (Pet. p. 11). The fact is that its petition for rehearing was based solely upon the proposition *that the court should have applied some state rule of navigability and that no federal question was involved* (Petition for Rehearing, Parts I and II). Granting that the petition for rehearing is confusing and somewhat obscure, the fact remains that the Minnesota Supreme Court so interpreted it in its opinion denying the rehearing when it said (Pet. App. A, p. 61):

> "But as to applicable legal principles, the state now takes the position that the *Federal* tests for determining navigability of waters should *not* have been applied, but that some more liberal *state* rule should govern therein."

Furthermore, petitioner which now claims a federal question is involved because it raised it in its petition for rehearing specifically claimed, in that petition, that there was no federal question. It said (Petition for Rehearing, Part II, p. 20):

> "The decision is in conflict with controlling cases, which hold that a contest over title to submerged

> land under a federal patent does not, in the circumstances of this case, raise a question determinable according to federal law."

It followed that statement with these words (Petition for Rehearing, Part II, p. 21):

> "The property claimed here was not expressly included in the patents under which claimants deraign title. *Hence no issue is raised relative to the power or validity of an act done by the United States. Therefore, no federal question is presented.*" (Emphasis supplied.)

The only conclusion that can be reached from this amazing sequence of inconsistencies is as follows: Petitioner itself chose the theory of law on which the case was tried and decided by the trial court and affirmed by the Supreme Court. Petitioner then asked for a rehearing on the ground that no federal question was involved and that the cases should have been decided on some unknown state test of navigability. When that petition was denied it now asks this court to take jurisdiction on a ground that it expressly rejected in its last effort in the state court. If petitioner reverts to its original claim that its title arose of its sovereignty, the writ cannot be granted because the title is not claimed under the Constitution or statutes of the United States, and upon the further ground that it chose the theory on which the cases were tried. If it adheres to the theory claimed in the petition for rehearing, namely that the court should have decided the facts under some state rule of navigability, the writ cannot be granted because that is a question of state law over which this court has no jurisdiction.

III.

This court has repeatedly refused jurisdiction in cases involving the navigability of waters.

Whatever else may be said about the question of jurisdiction it appears that this Court, absent any claim of deprivation of property under the Federal Constitution, has consistently refused jurisdiction in cases involving the navigability of waters.

Illinois v. Economy Light and Power Company, 234 U. S. 497;
Egan v. Hart, 165 U. S. 188;
Chapman & Dewey Land Co. v. Bigelow, 206 U. S. 41;
Norton v. Whiteside, 239 U. S. 144;
Bird v. Ashton, 220 U. S. 604.

IV.

The state court applied the proper test of navigability.

As we read the petition the claim is this: the state courts were in error in applying the federal test of navigability because the issue was whether or not the defendant, as an incident of their patents, received the submerged lands. That issue is stated in these words (Pet. p. 14):

> "The issue in this case is whether the riparian patentees received, as an incident of their patent, the adjoining submerged lands, not whether the United States relinquished the beds of these waters to Minnesota in 1858."

This is a gross misstatement of the issue. The question was not whether the riparian owners had title but whether the state had title. In its complaint petitioner alleged that

it had title by reason of its sovereignty (Pet. App. B, p. 84), and under the law of Minnesota it was bound to prove its own title, not the weakness of the defendants' title. *Herrick v. Churchill,* 35 Minn. 318. Petitioner, in support of its claim of title, chose to rest it upon the basis of state sovereignty which, in turn, rested upon the federal test of navigability chosen by petitioner. Since the federal test is the only one by which the state could get title, and since petitioner voluntarily chose it, that test became the issue on which the strength of petitioner's title was tried and decided.

It requires no extended discussion to demonstrate that the federal test of navigability is the only test that can be applied in a case such as this. The question was forever settled in *United States v. Holt State Bank,* 270 U. S. 49, p. 55 where this Court said:

> "Both courts below found that the lake was navigable. But they treated the question of navigability as one of local law to be determined by applying the rule adopted in Minnesota. We think they applied a wrong standard. Navigability, when asserted as the basis of a right arising under the Constitution of the United States, is necessarily a question of federal law to be determined according to the general rule recognized and applied in the federal courts."

This point was affirmed in *United States v. Oregon,* 295 U. S. 1. This test had been adopted by the Supreme Court of Minnesota as the law of Minnesota in several cases prior to this case. *State v. Longyear Holding Company,* 224 Minn. 451, *Becker v. Shevlin Land Company,* 186 Minn. 401, *Bingenheimer v. Diamond Iron Mining Company,* 237 Minn. 332, *State ex rel. Burnquist v. Bollenbach,* 241 Minn. 103.

The record here shows that both courts below properly applied the rule of navigability laid down in the above cases (Findings of trial court, Pet. App. B, pp. 86-94, Opinion of Supreme Court, Pet. App. A, pp. 23-56).

V.

The state courts correctly applied the state law.

Whether the state courts correctly applied the state law of riparian rights does not raise any question in this Court unless such law contravenes some provision of the Federal Constitution or statutes—of which petitioner makes no claim. However, the fact that the state courts did properly construe and apply the state law of riparian rights is made abundantly clear by the opinions of the Minnesota Supreme Court (Pet. App. A, pp. 23-56, 57-77).

The only possible basis for any claim of title in the state to the beds of these waters is that they were navigable waters, and that the state acquired title thereto upon admission to statehood in 1858. There is no basis for the suggestion that, even if the waters were nonnavigable under federal tests, the state acquired title to the submerged lands at the time of the issuance of patents, under the guise of construing the patents. That has never been the law of Minnesota, and throughout these proceedings, petitioner made no claim that such was the law of Minnesota. The Supreme Court of Minnesota, throughout its history, has consistently held that riparian proprietors own the beds of nonnavigable lakes (Opinion denying rehearing, Pet. App. A, p. 77 and cases cited).

Lamprey v. State, 52 Minn. 181;
Shell v. Matteson, 81 Minn. 38;
Hanson v. Rice, 88 Minn. 273;

Tucker v. Mortenson, 126 Minn. 214;
Schmidt v. Marschel, 211 Minn. 539.

Petitioner cannot point to any decision of the state court which, in the words of this Court in *United States v. Oregon*, 295 U. S. 1, p. 28, holds "that a grant to individual upland proprietors impliedly grants to the state the adjacent land under water." Nor can petitioner now rely on any statute of the State of Minnesota. Even if it could, contrary to the holding of this Court in *United States v. Oregon*, 295 U. S. 1, claim navigability under a state statute, the fact is that petitioner never made any such claim at any stage of the proceedings. The Minnesota statute, *1 Minn. Stat.* 93.06, which is cited on page 4 of the Petition *was never mentioned at any stage of the proceedings including the petition for rehearing.* Indeed, we do not now read the Petition as making any claim under that statute.

Petitioner is now insisting that this Court has jurisdiction because the state court was wrong in applying the federal test of navigability; it insists that the state court could choose its own rule of navigability and should have chosen what petitioner calls the state rule. But petitioner has never pointed out to any court (including this Court) what the so-called state rule is or that it differs from the federal rule. The fact is that in every case in the Minnesota Supreme Court *involving a question of title* between the state and riparian owners, excepting *Lamprey v. State*, 52 Minn. 181, that court has specifically applied the federal test of navigability. In *Lamprey* the title was held to be in the riparian owners and the discussion of navigability was dictum concerning only the *right of the public to use the waters*. Each time the question of *title* to submerged

lands has been in issue the Minnesota Supreme Court has consistently applied the federal test and each time it has applied that test at the specific urging of Petitioner (Opinion denying rehearing, Pet. App. A, pp. 67-70).

State v. Longyear Holding Co., 224 Minn. 451;
Bingenheimer v. Diamond Iron Mining Co., 237 Minn. 332;
State v. Bollenbach, 241 Minn. 103;
State v. Adams, 89 N. W. 2d 661.

It would seem to follow that if petitioner is correct in saying that the test of navigability is purely a state question and that the state can choose its own test of navigability, the state has so chosen, both through its Attorney General and through its Supreme Court. If the state had such a choice it certainly could choose the federal test if it so desired. Having made such a choice (which petitioner says is a state question) no federal question exists and this Court has no jurisdiction. Petitioner cannot have it both ways.

VI.

The writ should not be granted to review the questions of fact.

It is difficult to determine from the petition whether petitioner is asking this Court to review the question of fact decided by both courts below (Pet. pp. 3, 18). Out of some two thousand pages of testimony and out of 179 Exhibits there are attached to the petition only a few Exhibits which, on any basis, are relatively unimportant to the ultimate findings of nonnavigablity.

It is neither desirable nor necessary to discuss and dissect the fact question in this brief. It should suffice to say that a reading of the findings of the trial court (Pet. App. B, pp. 86-94) and the exhaustive opinion of the Minnesota Supreme Court (Pet. App. A, pp. 23-56) demonstrate beyond question that the findings were supported by the evidence. Indeed, it would be difficult to sustain a contrary finding under any test of navigability, federal or other.

The rule that this Court will not grant certiorari to review questions of fact is supported by the following cases:

Dower v. Richards, 151 U. S. 658;
Egan v. Hart, 165 U. S. 188;
Marshall Dental Manufacturing Company v. State of Iowa, 226 U. S. 460;
Illinois v. Economy Light & Power Company, 234 U. S. 497.

The statement of petitioner that the right of the public to use the *waters* is involved is a misstatement of this issue. At all times it was conceded that the question of public use of the waters was never an issue in the cases (Respondents' Brief in answer to petition for rehearing, pp. 81-94) and in both opinions of the Minnesota Supreme Court this point was emphatically stated (Pet. App. A, pp. 56, 77).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

State of Minnesota, District Court.
County of Crow Wing. 15th Judicial District.

State of Minnesota,

Plaintiff,

vs.

Adams Holding Company, a corporation, et al.,

Defendants.

Complaint

Plaintiff for its cause of action alleges:

I.

That Clinker Lake is a navigable body of water situated in the County of Crow Wing, Minnesota, and bounded by by the following tracts of land, viz.: The Southwest Quarter of the Southwest Quarter (SW¼ SW¼), Lot Six (6), or the East One-half of the Southwest Quarter (E½ SW¼), Lot Seven (7), or the West One-half of the Southeast Quarter (W½ SE¼), all in Section Twenty-five (25); and, the Northwest Quarter of the Northwest Quarter (NW¼ NW¼), the Northeast Quarter of the Northwest Quarter (NE¼ NW¼), and the Northwest Quarter of the Northeast Quarter (NW¼ NE¼), Section Thirty-six (36), all in Township Forty-seven (47) North, Range Twenty-nine (29) West of the 4th Principal Meridian, which tracts of land were on May 11, 1858, ever since said time have been, and now are riparian to said Clinker Lake,

and that the outlet stream from Clinker Lake extending through the Northwest Quarter of the Northwest Quarter (NW¼ NW¼) of Section Thirty-six (36), the Northeast Quarter of the Northeast Quarter (NE¼ NE¼), the Southeast Quarter of the Northeast Quarter (SE¼ NE¼), the Southwest Quarter of the Northeast Quarter (SW¼ NE¼), and the Southeast Quarter of the Northwest Quarter (SE¼ NW¼) of Section Thirty-five (35), Township Forty-seven (47) North, Range Twenty-nine (29) West of the 4th Principal Meridian, which empties into Curley Lake also known as Turner Lake, was, during all of the time aforesaid, a navigable stream connecting said Clinker Lake and said Curley Lake, also known as Turner Lake; that on May 11, 1858, said Clinker Lake and said stream connecting Clinker Lake and said Curley Lake, also known as Turner Lake, in their natural and ordinary conditions were susceptible of being used as highways for commerce over which trade and travel was or could have been conducted in the customary mode of trade and travel on water.

II.

That the defendant Adams Holding Company is a corporation organized and existing by virtue of the laws of the State of Minnesota; that the defendant Arketah Company is a corporation organized and existing by virtue of the laws of the State of Minnesota; that the defendant Cuyler Culver Adams is the administrator of the estate of Virginia C. Adams; that the Cuyuna Mining and Investment Company is a corporation organized and existing by virtue of the laws of the State of Delaware, and authorized to conduct its business within the State of Minnesota; that defendant James F. Gibbon is the duly appointed receiver for the Northern Minnesota Ore Company, a corporation,

organized and existing by virtue of the laws of the State of Minnesota; that the defendant The Gregory Company is a corporation organized and existing by virtue of the laws of the State of Minnesota; that the defendants Thomas F. Comerford, Patrick O'Brien, Edward Feigh, John Feigh, and Thomas H. Murray are the duly appointed trustees under the last will and testament of Thomas Feigh, deceased; that the defendant Immigration Land Company is a corporation organized and existing by virtue of the laws of the State of Minnesota; that the defendant Monakee Company is a corporation organized and existing by virtue of the laws of the State of Minnesota; that the defendant North Star Land Company is a corporation organized and existing by virtue of the laws of the State of Minnesota; that the defendant Northern Minnesota Ore Company is a corporation organized and existing by virtue of the laws of the State of Minnesota; that the defendant Northern Pacific Railroad Company is a corporation organized and existing by virtue of the laws of the State of Wisconsin and authorized to conduct its business in the State of Minnesota; that the defendant Onondaga Iron Company is a corporation organized and existing by virtue of the laws of the State of Minnesota; that the defendant Pine Land Lumber Company is a corporation organized and existing by virtue of the laws of the State of Delaware and authorized to conduct its business in the State of Minnesota; that the defendant E. L. Trask Corporation is a corporation organized and existing by virtue of the laws of the State of Minnesota; that the defendant Winston Bros. Company is a corporation organized and existing by virtue of the laws of the State of Minnesota; that the defendant the Youngstown Mines Corporation is a corporation organized and existing by virtue of the laws of the State of West Virginia

and authorized to conduct its business in the State of Minnesota.

III.

That plaintiff, upon admission to the United States as a sovereign state, became the owner of and ever since has been, and now is, the owner in fee simple of all that portion of the bed of Clinker Lake below ordinary low-water mark, and the owner of that portion of the river bed of the stream connecting Clinker Lake and Curley Lake, also known as Turner Lake, lying and being below the ordinary low-water mark, and during all of the period of time aforesaid was and is the sole owner of all iron ores and other minerals on, in, or under said lands, together with the right to enter upon said lands and explore for, mine and remove such iron ore and other minerals, and the right to lease or otherwise dispose of said lands and such iron ores and other minerals, together with the right to regulate, control and divert the water covering said beds, and that the defendants have no right, title, or interest therein.

IV.

That the defendants and each of them claim estates or interests in or liens thereon adverse to the plaintiff.

Wherefore plaintiff prays judgment that it is the owner in fee simple of such lands constituting the lake bed of Clinker Lake and the river bed of the stream connecting Clinker Lake and Curley Lake, also known as Turner Lake, as aforesaid, and the sole owner of all iron ores and other minerals on, in, or under said lands, together with the exclusive right to enter on said lands and explore for and remove such iron ore and other minerals, together with the right to regulate, control, and divert the waters

of Clinker Lake, and that the defendants and none of them have any estate or interest in or lien upon said lands, or the iron ores or other minerals thereon, or thereunder, and for its costs and disbursements herein.

Dated March 24th, 1949.

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